

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE PHILLIES, a Pennsylvania limited
partnership,

Plaintiff,

v.

HARRISON/ERICKSON, INCORPORATED,
a New York corporation, HARRISON
ERICKSON, a partnership, and WAYDE
HARRISON and BONNIE ERICKSON,

Defendants.

CASE NO. 1:19-cv-07239-VM

JURY TRIAL DEMANDED

**DEFENDANTS' SUPPLEMENTAL RULE 26(a)(2)(C) EXPERT DISCLOSURE WITH
RESPECT TO BONNIE ERICKSON**

Pursuant to Federal Rule of Civil Procedure 26(a)(2)(C), Defendants and Counterclaim Plaintiffs Harrison/Erickson, Incorporated, Harrison Erickson, Wayde Harrison, and Bonnie Erickson (collectively, and individually, “Defendants”) by and through their attorneys, respectfully provide the following disclosure concerning expert testimony.

I. WITNESS QUALIFICATIONS AND STATUS AS PARTY EXPERT

Bonnie Erickson, who is a party in this case and who is not specially employed to provide expert testimony in the case or one whose duties as a party’s employee regularly involves giving expert testimony, is hereby disclosed as an expert witness in the case. She has had a long career as a designer of puppets, costumes, toys, artwork, and graphics, and is widely known for her work with Jim Henson and The Muppets, as well as with Children’s Television Workshop. She has also authored and created numerous works of art concerning the Phillie Phanatic and other sports mascots. *See* HE 005968; https://en.wikipedia.org/wiki/Bonnie_Erickson. Prior mascots, designs, and characters on which Ms. Erickson has worked are listed in the referenced biography. She will rely upon her knowledge, skill, experience, training, and education, as well as documents produced in discovery in this case, to proffer opinions. See attached exhibits.

II. SUBJECT MATTER

Ms. Erickson will rely upon facts and data in the case that she has created, been made aware of, or personally observed. She will rely upon the artwork, materials, images, mascots, audiovisual works, and merchandise produced and exchanged by the parties in discovery in this case, as well as deposition testimony, exhibits, and expert testimony in the case. She will rely upon her experience and other attributes as well, including her experience with drawing characters and other works, with using Adobe Illustrator, with building mascots and other works

and characters, and with merchandising. The Defendants reserve the right to supplement this response based on any further discovery produced or exchanged by the respective parties.

III. SUMMARY OF FACTS AND OPINIONS

1. The original Phanatic mascot/costume/sculpture and artwork portraying the Phanatic dating prior to October 31, 1984 listed on the attached Exhibit A and incorporated in this disclosure involved, in Ms. Erickson's opinion, significant creative work product by Ms. Erickson and Wayne Harrison, but not by The Phillies. Specifically, designing and constructing the mascot/costume/sculpture involved significant creative work by Ms. Erickson and Wayne Harrison. It involved conceiving of and fixing in tangible form(s) a character of a visual and physical nature that expressed personality, graphic appeal, artistic distinction, and humor. Although the Phanatic designed and built by Harrison and Erickson was designed and built to be worn by a person, the mascot/costume/sculpture that became the Phanatic, in Ms. Erickson's expert opinion, reflect significant artistic choices. Moreover, artwork depicting, or referring to the Phanatic created prior to the October 31, 1984 assignment ("1984 Assignment") as identified in Exhibit A also, in Ms. Erickson's expert opinion, reflects significant artistic choices ("Pre-Assignment Artwork"). This Pre-Assignment artwork has been exchanged in prior discovery in this case, and/or has been marked as a deposition exhibit in this case. Attached hereto as Exhibit B and incorporated in this disclosure is a list of documents relied on by Bonnie Erickson in connection with her foregoing opinion.

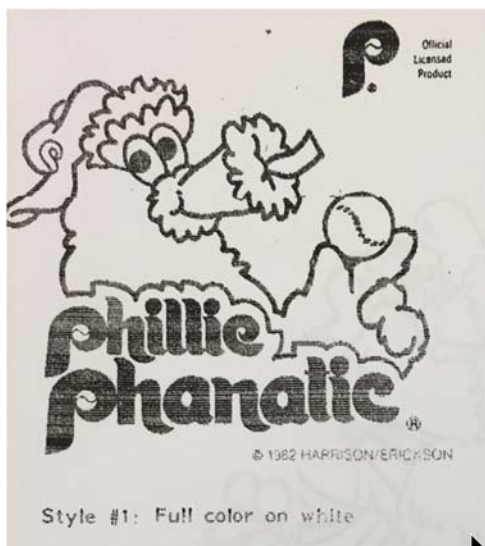
2. Throughout the years subsequent to the 1984 Assignment, Ms. Erickson provided additional Phanatic-related artwork and/or materials, including at the request of The Phillies or with their permission and consent ("Post-Assignment Artwork"). The Post-Assignment Artwork identified as numbers 1, 2, 75, 77, 79, 82, 84, 86, 87, 88 on Appendix A to Plaintiff's

Supplemental Response to Defendants' Interrogatory Nos. 5 and 6 and depicted in the documents marked HE000034, HE000584, PHAN0010690, PHAN0043256, conform to the creative choices previously made by Harrison/Erickson to create the Pre-Assignment Artwork. In addition, subsequent to the 1984 Assignment, Harrison/Erickson repaired and provided new copies of the Phanatic mascot/costume/sculpture. Harrison/Erickson was not asked by The Phillies to alter or modify the design of the Phanatic mascot/costume/sculpture that existed prior to the 1984 Assignment in any type of creative way. Ms. Erickson will opine that the Phanatic mascot/costume/sculpture which was the subject of the 1984 Assignment has not been creatively altered or modified. Ms. Erickson will also opine that the Post-Assignment Artwork identified in this paragraph did not change the creative content of the Phanatic or reinterpret the Phanatic in any new or meaningful way. The Post-Assignment Artwork identified in this paragraph involved changes of format or color, functional or utilitarian work, or other insignificant alterations as compared to Pre-Assignment Artwork, which were less than minimal from a creative standpoint. In her expert opinion, her use of digital software products to convert the format of Pre-Existing Artwork and/or to make minor alterations to Pre-Existing Artwork did not require more than trivial new creativity. While, in her opinion, her work on the Post-Assignment Artwork identified in this paragraph involved technical skill and significant investments of time, changes made for the purpose of updating Pre-Assignment Artwork reflected the same creative choices previously made for the Pre-Assignment Artwork and did not involve new creative choices of more than a trivial nature.

3. The Phanatic costume that the parties have been referencing as "P2" and artwork portraying P2 is/are, from an artistic point of view, extremely similar – in Ms. Erickson's expert opinion – to the original Phanatic and artwork, so much so, that the two would be perceived as

nearly identical. Depictions of this P2 costume and P2 artwork identified as part of this report in Exhibit C are, in Ms. Erickson's expert opinion, attempts to reproduce artwork and/or materials previously created by Harrison/ Erickson. The alterations to the original Phanatic with respect to the P2 costume and P2 artwork are, in Ms. Erickson's expert opinion, of less than minimal artistic significance. The eyes, eyelashes and eyebrows, hat, jersey, snout, shoes, posterior, tail, leggings, feathering, arms, and hands, in her opinion, replicate and/or mimic the features of other mascots in the marketplace created by Harrison/Erickson, namely Slyly, Duncan, Sport, Stuff, and the Phanatic itself (in its original form and as depicted over time), as well as the features of mascots developed by others, namely, Schooner, Cattrick, Loco, Screamer, Reggy the Purple Party Dude, Guilford, Melvin, and the Oregon Duck (and other mascots that share such features), The Phillies' claimed alterations to the Phanatic's eyes, eyelashes and eyebrows, hat, jersey, snout, shoes, posterior, tail, leggings, feathering, arms, and hands reflect, in Ms. Erickson's expert opinion, trivial changes from an artistic standpoint that do not distinguish P2, creatively, from the Phanatic. Attached hereto as Exhibit D and made a part of this disclosure is a comparison of P1 and P2 created by Ms. Erickson.

4. Also, the faux fur used for P2 is the same fabric from a dye lot Harrison/Erickson provided to the Phillies. PHAN0043240. The hands on the Phanatic had been changed to fleece palms instead of faux fur fabric prior to 1984. The orange fleece inside the snout and green feathers on the end of the P2 snout are the same as the Phanatic. PHAN0043074. Artwork prior to 1984 also shows the hat on both the left and right sides. PHAN0043246. The original logo for Phanatic products has the hat on the right, as reflected below:



Ms. Erickson will opine that these attributes of P2 do not reflect more than a trivial variation from the original Phanatic that existed prior to the 1984 Assignment.

DATED: New York, New York
June 8, 2020

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By: /s/ Paul D. Montclare

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Attorneys for Defendants

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Harrison Erickson, Wayde Harrison, and

Bonnie Erickson

EXHIBIT A

BATES
HE000007
HE000009
HE000028
HE000030
HE000032
HE000039
HE000064
HE000081
HE000104 – HE000113
HE000115
HE000117 – HE000118
HE000171
HE000183
HE000195
HE000198
HE000201
HE000343 – HE000412
HE000488 – HE000489
HE000495
HE000520 – HE000521
HE000523 – HE000524

HE000528
HE000537
HE000549
HE000551 – HE000552
HE000554
HE000556
HE000558 – HE000559
HE000562 – HE000563
HE000565 – HE000566
HE000574
HE000576
HE000578
HE000675
HE000680 – HE000703
HE000705 – HE000718
HE000720 – HE000724
HE000726
HE000729 – HE000735
HE000737
HE001132
HE002246
HE002248
HE002259 – HE002260
HE002283

HE002287
HE003845
HE004049 – HE004050
HE004042
HE004057 – HE004058
HE004060
HE004062 – HE004063
HE004071
HE004073 – HE004075
HE004079 – HE004082
HE004084 – HE004089
HE004093 – HE004096
HE004246 – HE004249
HE004258 – HE004260
HE004262
HE004283 – HE004285
HE004288
HE004294
HE004668 – HE004675
HE006087
PHAN0000018
PHAN0000034 – PHAN0000037
PHAN0000045 – PHAN0000046
PHAN0000048

PHAN0000055
PHAN0000058 – PHAN0000060
PHAN0000062 – PHAN0000063
PHAN0000066
PHAN0000086
PHAN0000120
PHAN0000123 – PHAN0000125
PHAN0000129 – PHAN0000137
PHAN0000232
PHAN0000240
PHAN0000242
PHAN0000258 – PHAN0000262
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EXBHIT B

Bates/Description
PHAN0042989
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PHAN0043007-09
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PHAN0000029-32
PHAN0000034
PHAN0000036
PHAN0000015
PHAN0021319-23
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Phillies' Interrogatory Appendix of Alleged Derivative Works
Deposition Testimony of Scott Brandreth, Tom Burgoyne, William Giles, Christine Long, David Buck, David Raymond, and Philadelphia

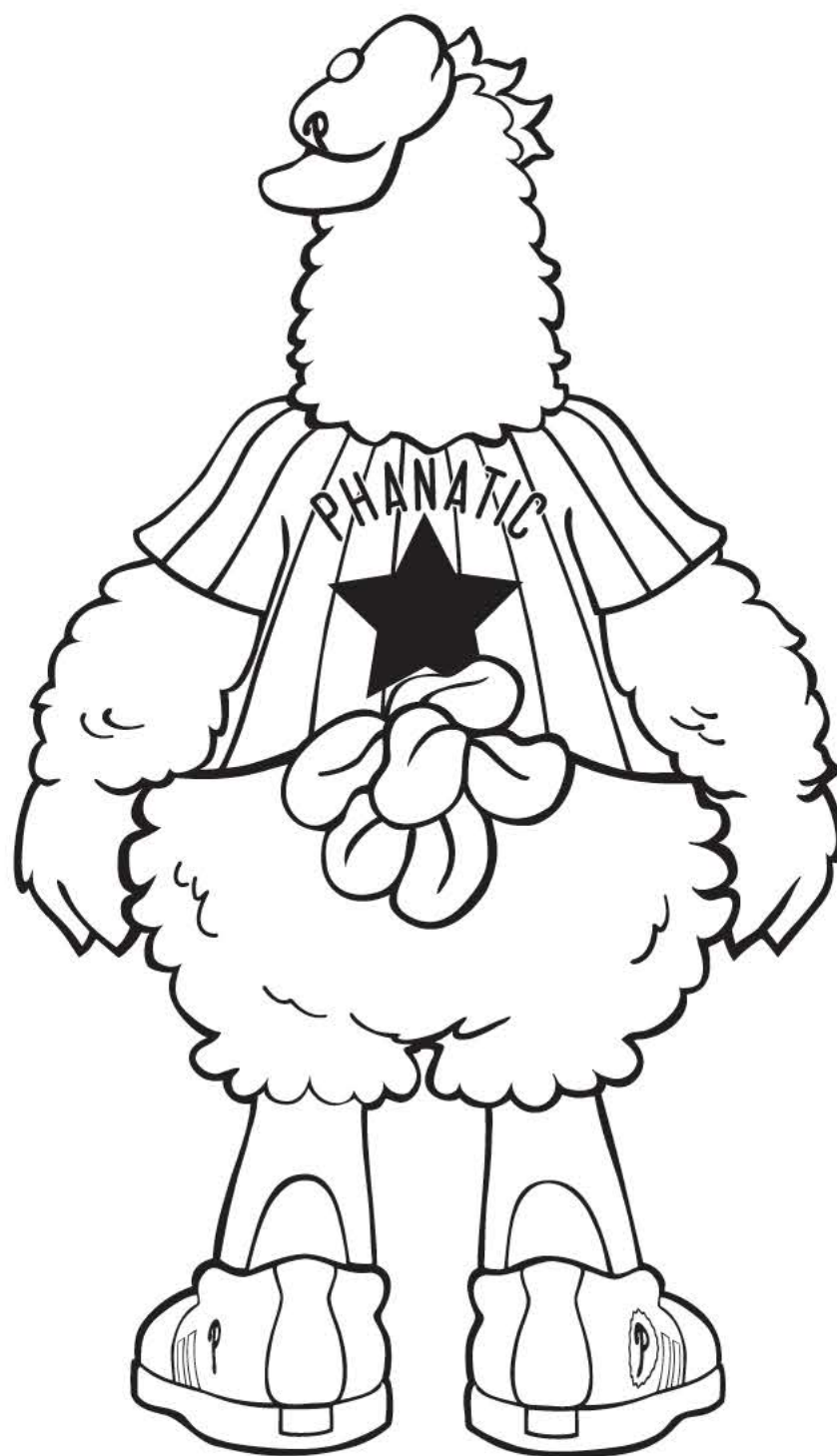
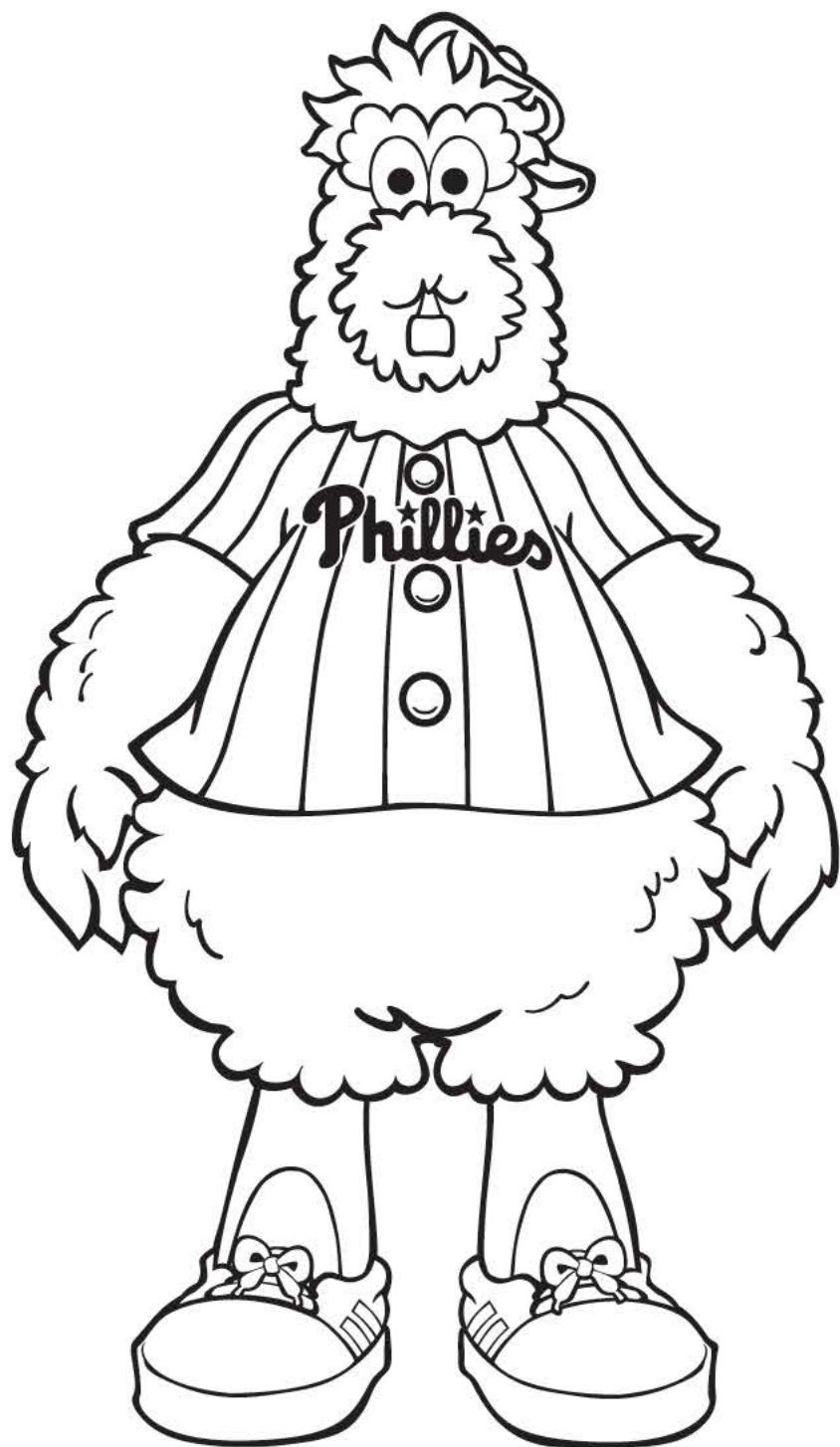
Phillies
concerning
creation of
Phanatic, Style
Guides, and P2

EXHIBIT C

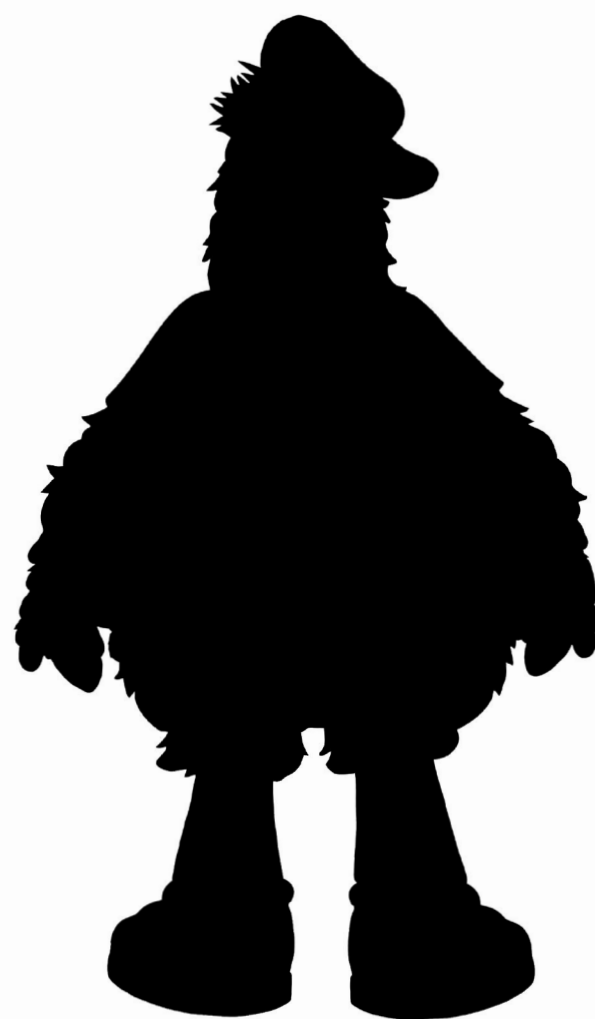
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PHAN0043177 – PHAN0043181
PHAN0043183 – PHAN0043187
PHAN0043189 – PHAN0043193
PHAN0043195
PHAN0043215 – PHAN0043218
PHAN0043547 – PHAN0043566

EXHIBIT D

PHILADELPHIA PHILLIES OFFICIAL MASCOT DESIGNS



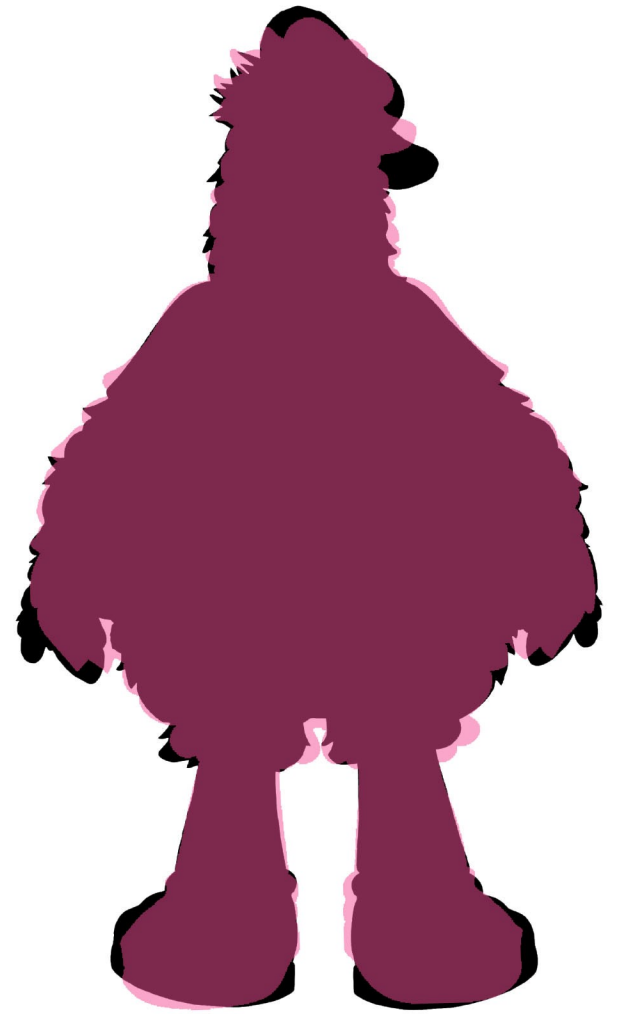
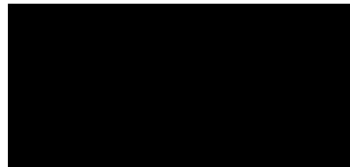
**3D MASCOT
TURNAROUND**

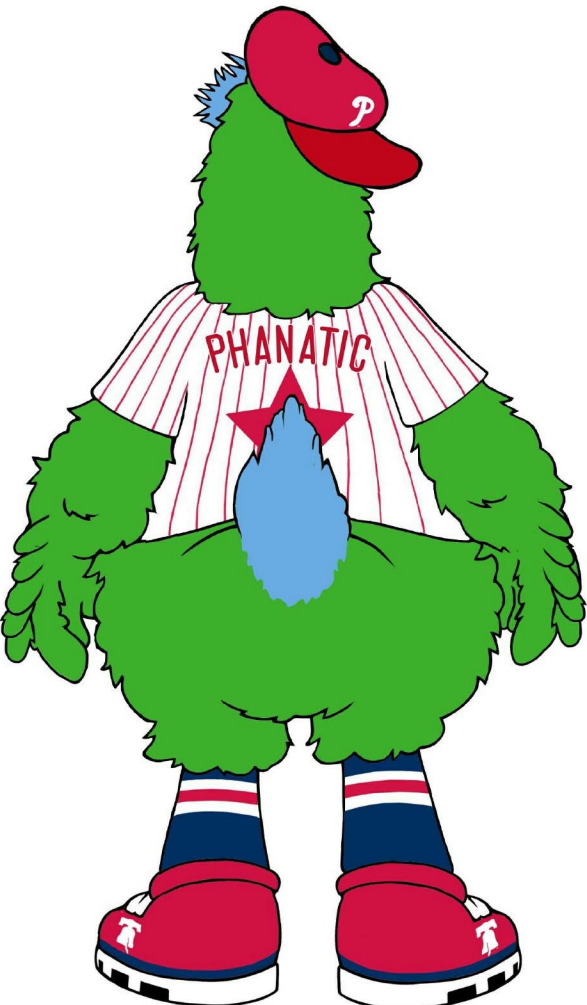
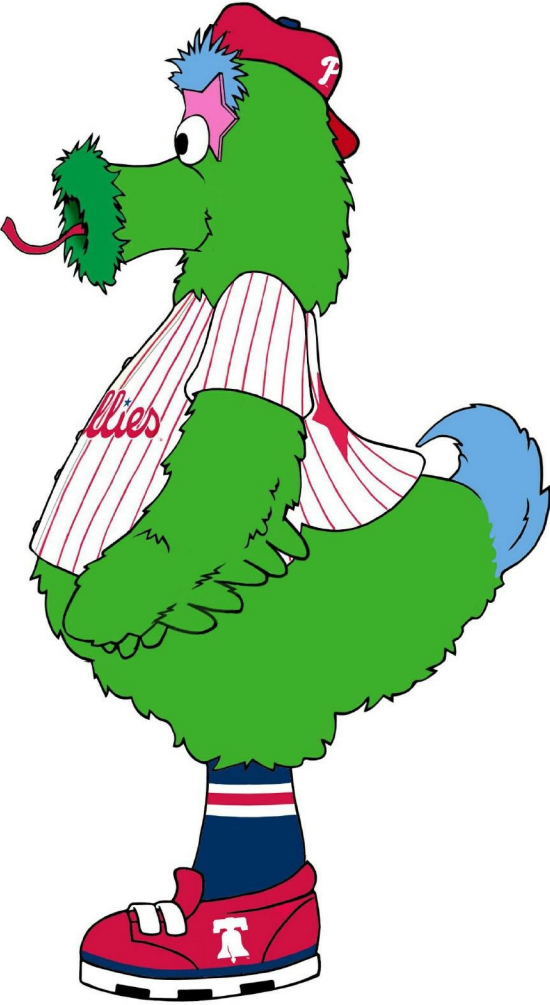


Phillie Phanatic



P2





MLB art transparency over P2

Update 1-13-2019

